

On February 4, 2008, petitioner pleaded guilty, pursuant to a written plea agreement, to one count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924. The court sentenced petitioner on June 9, 2008, to a term of 120 months imprisonment, followed by a three-year term of supervised release. Petitioner's term of supervision began on February 2, 2016. The probation office filed the instant motion for revocation of supervised release on June 26, 2017, on the basis of charges including assault on a female pending in state court. As noted, petitioner


filed the instant § 2255 motion on September 16, 2017. Petitioner's revocation hearing currently is scheduled for November 6, 2017.

COURT'S DISCUSSION

In light of United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc), petitioner does not have a prior conviction of a crime punishable by imprisonment for a term exceeding one year. A necessary element of the crime of conviction is therefore lacking, see 18 U.S.C. § 922(g)(1), and petitioner's conviction must be vacated on the basis of his § 2255 petition. See Miller v. United States, 735 F.3d 141, 147 (4th Cir. 2013).

Where the government waives defenses and concedes that petitioner's motion to vacate sentence should be granted, and where the court, having reviewed the record, finds petitioner's motion meritorious, said motion is GRANTED. The judgment of conviction and sentence, including term of supervised release, dated June 9, 2008, is VACATED. The motion for revocation of supervised release, accordingly, is DENIED AS MOOT and the revocation hearing is cancelled. The court DIRECTS the United States Marshals Service immediately to release petitioner from federal custody.

SO ORDERED, this the 19th day of September, 2017.



LOUISE W. FLANAGAN
United States District Judge